UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,021	08/17/2000	Alan B. Cayton	59428-P001US-10020580	4559

29053   7590   07/08/2005

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EXAMINER
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ART UNIT	PAPER NUMBER
3629	

DATE MAILED: 07/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/641,021	CAYTON ET AL.
	Examiner	Art Unit	
	Jonathan Ouellette	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>06 April 2005</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-101</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-101</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form

the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. <u>Claims 1-2, 6-26, 28-34, and 36-44, 46-76, and 78-87</u> **are rejected under 35 U.S.C.**

102(e) as being anticipated by Williams et al. (US 6,618,734 B1).

3. As per **independent Claim 1, Williams** discloses a method for qualifying candidates

for employment with an employer (abstract), said method comprising: executing a

computer program, said computer program receiving as input from said employer a

desired hiring criteria of said employer (C3 L30-64); based on said desired hiring

criteria of said employer, said computer program generating at least one customized

application program (automated interview questions) that is executable to interact

with candidates for employment with said employer and determine whether each of

said candidates is qualified for employment with said employer (C3 L2-5, C3 L62-

64); allowing said candidates access to the at least one generated customized

application program (C5 L48-67); and responsive to input from each of said

candidates to the at least one generated customized application program automatically

determining whether each of said candidates qualifies for a position of employment

with the employer (C5 L53-67).

4. **As per independent Claims 30, 54, and 62,** Williams discloses a system (computer

executable program code, or business method) for use in qualifying candidates for

employment with an employer (abstract), said system (computer executable program

code, or business method) comprising: a processor-based device; and a computer

program executable by said processor-based device to receive as input desired hiring

criteria of said employer and generate at least one application program (C3 L2-5, C3

L30-64), wherein said desired hiring criteria specifies at least one attribute to be

possessed by a candidate to be considered qualified for a position of employment (C2

L58-62, C10 L49-58), and wherein said at least one application program is executable

to interact with candidates and determine whether each of said candidates qualifies

for said position of employment with said employer (C5 L48-67).

5. As per Claim 2, Williams discloses wherein said desired hiring criteria includes at

least one criteria selected from the group consisting of: candidate's education,

candidate's work experience, candidate's possessing a particular license, candidate's

language skills, and candidate's computer skills (C2 L50-62).

6. As per Claim 6, Williams discloses wherein said computer program receiving said

desired hiring criteria further includes: receiving said desired hiring criteria from a

user interface (C3 L30-36 job profiling obtained and entered into the system).

7. As per Claim 7, Williams discloses wherein said user interface is a separate program executable to communicative with said computer program (C3 L30-64, job profiling interview design system communicates with candidate interview application).

8. As per Claims 8, 36, and 57, Williams discloses wherein said at least one customized application program is executable to interact with a candidate to enable said candidate to self-administer a qualification session for a position of employment with said employer (Fig.2-6).

9. As per Claims 9, 37, and 58, Williams discloses wherein said at least one customized application program enables access by one or more candidates via at least one communication platform (Fig.2-6, C2 L50-54).

10. As per Claims 10, 38, and 59, Williams discloses wherein said at least one communication platform includes platforms selected from the group consisting of telephony-based platform, web-based platform, and other processor-based platforms (Fig.2-6, C2 L50-54).

11. As per Claims 11, 39, and 60, Williams discloses an IVR application that enables access by one or more candidates via telephone (Fig.2-6, C2 L50-54).

12. As per Claims 12, 40, and 61, Williams discloses wherein said at least one customized application program includes a web-based application that enables access by one or more candidates via a processor-based device via the World Wide Web (C2 L50-54).

13. As per Claims 13 and 41, Williams discloses wherein said generating step includes: generating a plurality of said customized application programs (abstract, system generated for all published job openings).

14. As per Claims 14 and 42, Williams discloses wherein each of said plurality of customized application programs is executable to enable interaction with candidates via different communication platforms (C2 L50-54).

15. As per Claim 15, Williams discloses said computer program receiving as input from said employer preferences of said employer as to characteristics of said at least one customized application program (C2 L50-62, client identified dimensions).

16. As per Claim 16, Williams discloses wherein said computer program receives as input from said employer indication of one or more communication platforms on which said at least one customized application program is to enable access by candidates (C6 L34-36, client pre-determines response mode).

17. As per Claims 17 and 67, Williams discloses wherein said at least one customized application program is executable to assist in further screening of candidates beyond determining whether based on said desired hiring criteria said candidates qualify for a position of employment with the employer (C8 L41-61, background check and facilitating interview).

18. As per Claims 18 and 68, Williams discloses wherein said at least one customized application program is executable to schedule future testing with a candidate determined based on said desired hiring criteria to be qualified for a position of employment with the employer (C8 L41-61, facilitating follow-up interview).

19. As per Claims 19 and 69, Williams discloses wherein said at least one customized application program is executable to administer testing of a candidate determined based on said desired hiring criteria to be qualified for a position of employment with the employer (C8 L11-41, BAI analysis).

20. As per Claims 20 and 70, Williams discloses wherein said at least one customized application program is executable to schedule a future personal interview with hiring personnel of the employer and a candidate determined based on said desired hiring criteria to be qualified for a position of employment with the employer (C8 L51-67, C9 L1-23).

21. As per Claims 21 and 71, Williams discloses wherein at least one customized application program interacts with a calendaring program to schedule said future personal interview at a time available for said hiring personnel (C9 L1-5, automated scheduler)

22. As per Claims 22 and 72, Williams discloses wherein said at least one customized application program is executable to forward supplemental materials to hiring personnel of the employer for a candidate determined based on said desired hiring criteria to be qualified for a position of employment with the employer (C8 L45-61, send interview results or background checks).

23. As per Claims 23, 44, and 73, Williams discloses wherein said supplemental materials include at least one of the materials selected from the group consisting of candidate resume, writing sample, *questionnaire*, letter of recommendation, and school transcript (C8 L45-61, send interview results – BFOQ and BAI).

24. As per Claims 24 and 74, Williams discloses wherein said at least one customized
application is executable to forward said supplemental materials to hiring personnel
electronically (C8 L45-61, send interview results or background checks)

25. As per Claims 25, 47, and 75, Williams discloses wherein said at least one
customized application is executable to forward said supplemental materials to hiring
personnel via at least one communication method selected from the group consisting
of e-mail and fax (C8 L45-61, send interview results or background checks; C9 L19-
23, application for employment transmitted to HR)

26. As per Claims 26 and 76, Williams discloses the step of said at least one customized
application receiving said supplemental materials from a candidate (C9 L19-23,
application for employment transmitted to HR).

27. As per Claim 28, Williams discloses the step of said at least one customized
application program outputting to a candidate determined by said customized
application program as not qualifying for a position of employment with the employer
one or more reasons for said candidate not qualifying (C8 L35-38).

28. As per Claim 29, Williams discloses the step of storing to a database, information
about a candidate received by said at least one customized application (C6 L52-54,
candidate account in the system).

29. As per Claim 31, Williams discloses wherein said processor-based device is a device
selected from the group consisting of PC, workstation, laptop computer, and PDA
(C1 L6-20).

30. As per Claim 32, Williams discloses wherein said processor-based device is a server computer (C1 L6-20, Internet related system).

31. As per Claim 33, Williams discloses wherein said server computer comprises a web server (C1 L6-20, Internet related system).

32. As per Claim 34, Williams discloses wherein said at least one attribute includes an attribute concerning one selected from the group consisting of: candidate's education, candidate's work experience, candidate's possessing a particular license, candidate's language skills, and candidate's computer skills (C2 L50-62).

33. As per Claim 43, Williams discloses an input device communicatively coupled to said processor-based device to enable candidates to input supplemental materials to said processor-based device (C9 L19-23, application for employment).

34. As per Claim 46, Williams discloses wherein said at least one application program is executable to electronically communicate said supplemental materials to hiring personnel (C9 L19-23, transmitted to HR).

35. As per Claim 48, Williams discloses a data storage device communicatively coupled to said processor-based device to enable storage of data received by said at least one application program (C1 L6-20, C2 L50-53).

36. As per Claim 49, Williams discloses wherein said data storage device is at least one device selected from the group consisting of hard drive, floppy disk, Compact Disc (CD), Digital Versatile Disc (DVD), and other data storage devices (C1 L6-20, C2 L50-53).

37. As per Claims 50, 52, 63, and 65, Williams discloses wherein said processor-based

device is communicatively coupled to a communication network to enable access by

said employer / candidates to said computer program via said communication

network (C2 L50-53, C3 L25-27, Internet).

38. As per Claims 51, 53, 64, and 66, Williams discloses wherein said communication

network is a network selected from the group consisting of: PSTN, wireless

communication network, a proprietary network, general purpose processor-based

information network, dedicated communication lines, computer network, direct PC to

PC connection, LAN, WAN, modem to modem connection, *Internet*, Intranet,

Extranet, or any combination thereof (C2 L50-53, C3 L25-27, Internet).

39. As per Claim 55, Williams discloses wherein said code for presenting and code for

generating are part of a common computer program (C1 L6-20, inherent to PC

system/application operation).

40. As per Claim 56, Williams discloses wherein said code for presenting and said code

for generating are each part of separate computer programs that are capable of

communicating with each other (C1 L6-20, inherent to PC system/application

operation; example: automated interview system communicates with automated

interview scheduler).

41. As per Claims 78, 83, 85, and 87, Williams discloses wherein said input of employer

preferences as to characteristics of said at least on customized application program

received by said computer program includes at least one selected from the group

consisting of: input indicating whether the at least one customized application

program is to automatically schedule an interview with candidates determined to be

qualified for a position (C8 L41-67), input indicating whether the at least one

customized application program is to interact with a calendaring program to schedule

an interview with candidates determined to be qualified for a position (C9 L1-11,

automatic scheduler), input indicating one or more interviewers with whom an

interview is to be schedules for candidates determined to be qualified for a position

(C9 L1-11, automatic scheduler), input indicating whether the at least on customized

application program is to request supplemental material from candidates determined

to be qualified for a position (C9 L19-23, application for employment), input

indicating whether the at least one customized application program is to forward

supplemental material received from qualified candidates to one or more hiring

managers (C9 L19-23, transmitted to HR), and input indicating whether the at least

one customized application program is to schedule future testing (interview) with a

candidate determined to be qualified for a position (C8 L41-67).

42. As per Claim 79, Williams discloses wherein said generated at least one customized

application program operates in accordance with the input employer preferences (C8

L54-57, client selections option for follow-up interview).

43. As per Claim 80, Williams discloses wherein said supplemental material includes at

least one of the materials selected from the group consisting of: candidate resume,

writing sample, *questionnaire*, letter of recommendation, and school transcript (C9

L19-23, application for employment – equivalent to questionnaire).

44. As per Claims 81 and 86, Williams discloses wherein said computer program is further executable to receive as input preferences of said employer as to operational characteristics of said at least one application program to be generated (C2 L60-62, C3 L62-64).

45. As per Claims 82 and 84, Williams discloses wherein said computer program is operable to receive a preference of said employer as to one or more communication platforms in which said at least one application program is to enable access by candidates (C6 L34-36).

46. **Claims 93-101 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith (US 6,701,313 B1).**

47. As per **independent Claims 93 and 99,**Smith discloses an automated employment decision system (method) for use in qualifying candidates for employment with an employer (abstract, matching user with employer), said system comprising: a processor-based device (Fig.1); and a computer program executable by said processor-based device (C1 L8-13, C6 L52-56) to receive manual input from a user defining a desired criteria for a position of employment with the employer (C12 L42-51), wherein said input defining a desired hiring criteria is not limited to a selection of hiring criteria pre-defined by said computer program (C12 L28-36, write test questions to database; C13 L9-23); and said computer program further executable to automatically integrate the defined hiring criteria into an application program (C12 L35-41, automatic test generator) that is executable to interact with candidates and determine, based at least in part on the defined hiring criteria, whether each of said

candidates qualifies for said position of employment with said employer (C12 L35-41, automatic pass mark generator; C12-C15).

48. As per Claims 94 and 100, Williams discloses wherein in automatically integrating the defined hiring criteria into said application program, the computer program generates at least one customized application program that is executable to interact with said candidates and determine, based at least in part on the defined hiring criteria, whether each of said candidates qualifies for said position of employment with said employer (C12-C15, Test creation and candidate park generated).

49. As per Claim 95, Williams discloses wherein said automatically integrating comprises: said computer program generating at least one customized application program that is executable to interact with candidates for employment with said employer and determine whether each of said candidates satisfies said at least one qualification criteria (C12-C15, Test creation and candidate park generated).

50. As per Claims 96 and 101, Williams discloses wherein receiving said manual input from a user for defining the desired criteria for a position, the computer program is executable to receive as manual input at least one question, and wherein said at least one customized application program presents said at least one question to said candidates (C12-C15, Test creation and candidate park generated).

51. As per Claim 97, Williams discloses wherein said receiving as manual input from a user to a computer program at least one qualification criteria (test question creation) further comprises receiving as manual input an indication of at least one answer to said at least one question that satisfy said at least one question, and wherein said at

least one customized application program determines whether answers received from

said candidates for said at least one question satisfy said at least one question (C12-

C15, Test creation and candidate park generated).

52. As per Claim 98, Williams discloses wherein receiving as manual input from a user at

least one qualification criteria further comprises: receiving said manual input defining

any qualification criteria desired for said position of employment, wherein said at

least one qualification criteria is not limited to a selection of qualification criteria pre-

defined by said computer program (C12-C15, Test creation and candidate park

generated).

Claim Rejections - 35 USC § 103

53. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth
     in section 102 of this title, if the differences between the subject matter sought to be patented and the
     prior art are such that the subject matter as a whole would have been obvious at the time the invention
     was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability
     shall not be negatived by the manner in which the invention was made.

54. **Claims 3-5, 35, and 88-92 are rejected under 35 U.S.C. 103(a) as being**

unpatentable over Williams in view of Smith.

55. As per Claim 3, although Williams discloses wherein said computer program

provides hiring criteria for said employer as said desired hiring criteria (C2 L50-62,

1st tier eligibility requirements; C7 L52-55).

56. Williams fails to expressly discloses wherein said computer program provides a

   predetermined list of hiring criteria for selection by said employer as said desired

   hiring criteria.

57. Smith discloses a computer program in a employment decision system, which

   provides a predetermined list of hiring criteria (lists boxes) for selection by said

   employer as said desired hiring criteria (C7 19-56, C8 L28-40)

58. Therefore, it would have been obvious to one of ordinary skill in the art at the time

   the invention was made to have included wherein said computer program provides a

   predetermined list of hiring criteria for selection by said employer as said desired

   hiring criteria, as disclosed by Smith in the system disclosed by Williams, for the

   advantage of providing a method for qualifying candidates for employment with an

   employer, with the ability to increase system effectiveness/efficiency by allowing the

   using to enter job criteria in a number of formats (enter free text / select from list).

59. As per Claim 4, Williams fails to expressly discloses wherein said computer program

   allows said employer to input additional hiring criteria not included on said

   predetermined list.

60. Smith discloses a computer program in an employment decision system, which allows

   said employer to input additional hiring criteria (create test questions) not included on

   said predetermined list (C13 L8-35, job provider writes questions and saves to

   question database).

61. Therefore, it would have been obvious to one of ordinary skill in the art at the time

   the invention was made to have included wherein said computer program allows said

employer to input additional hiring criteria not included on said predetermined list, as

disclosed by Smith in the system disclosed by Williams, for the advantage of

providing a method for qualifying candidates for employment with an employer, with

the ability to increase system effectiveness/efficiency by allowing the using to enter

job criteria in a number of formats (free text / select from list).

62. As per Claims 5 and 35, Williams discloses the ability of employers to enter changes

into the system (C2 L35-41, system accepts changes to employment criteria);

Williams fails to expressly disclose wherein said computer program includes a user

interface for interacting with said employer to receive as input said desired hiring

criteria from said employer.

63. Smith discloses wherein said computer program includes a user interface for

interacting with said employer to receive as input said desired hiring criteria from

said employer (Fig.1 and Fig.6).

64. Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to have included wherein said computer program includes a

user interface for interacting with said employer to receive as input said desired hiring

criteria from said employer, as disclosed by Smith in the system disclosed by

Williams, for the advantage of providing a method for qualifying candidates for

employment with an employer, with the ability to increase system

effectiveness/efficiency by providing tools to the user for direct communication with

the system.

65. As per Claims 88 and 92, Williams fails to expressly disclose wherein said computer

program receiving as input a desired hiring criteria comprises receiving manually

inputted hiring criteria from said employer, and wherein said computer program

generating said at least one customized application program comprises said computer

program automatically integrating the manually inputted hiring criteria into the at

least one customized application program.

66. Smith discloses a computer program in an employment decision system, which

receives manually inputted hiring criteria from said employer (C13 L8-35, job

provider writes questions and saves to question database), and wherein said computer

program generating said at least one customized application program comprises said

computer program automatically integrating the manually inputted hiring criteria into

the at least one customized application program (test creation C12-C15 from question

database).

67. Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to have included wherein said computer program receiving as

input a desired hiring criteria comprises receiving manually inputted hiring criteria

from said employer, and wherein said computer program generating said at least one

customized application program comprises said computer program automatically

integrating the manually inputted hiring criteria into the at least one customized

application program, as disclosed by Smith in the system disclosed by Williams, for

the advantage of providing a method for qualifying candidates for employment with

an employer, with the ability to increase system effectiveness/efficiency by allowing the using to enter job criteria in a number of formats (free text / select from list).

68. As per Claims 89, 90, and 91, Williams fails to expressly disclose wherein said computer program receiving as input a desired hiring criteria comprises: receiving said input defining any hiring criteria desired for said position of employment, wherein said input desired hiring criteria is not limited to a selection of hiring criteria pre-defined by said computer program.

69. Smith discloses a computer program in an employment decision system, which receives input defining any hiring criteria desired for said position of employment, wherein said input desired hiring criteria is not limited to a selection of hiring criteria pre-defined by said computer program (C13 L8-35, job provider writes questions and saves to question database).

70. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included wherein said computer program receiving as input a desired hiring criteria comprises: receiving said input defining any hiring criteria desired for said position of employment, wherein said input desired hiring criteria is not limited to a selection of hiring criteria pre-defined by said computer program, as disclosed by Smith in the system disclosed by Williams, for the advantage of providing a method for qualifying candidates for employment with an employer, with the ability to increase system effectiveness/efficiency by allowing the using to enter job criteria in a number of formats (free text / select from list).

71. **<u>Claim 27, 45, and 77</u> is rejected under 35 U.S.C. 103 as being unpatentable over Williams.**

72. As per Claim 27, 45, and 77, Williams does not expressly show wherein said at least one customized application receives said supplemental materials via at least one of the following methods: fax, e-mail, and digital imaging device.

73. However these differences are only found in the nonfunctional descriptive data and are not functionally involved in the steps recited. The method/system for qualifying candidates for employment with an employer would be performed regardless of the how the supplemental materials were sent. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack,* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry,* 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

74. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have sent supplemental materials by fax, e-mail, and/or digital imaging device, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

Response to Arguments

75. Applicant's arguments filed 4/6/2005, with respect to Claims 1-101 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

76. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Ouellette whose telephone number is (571) 272-6807. The examiner can normally be reached on Monday through Thursday, 8am - 5:00pm.

77. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone numbers for the organization where this application or proceeding is assigned (571) 273-8300 for all official communications.

78. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Office of Initial Patent Examination whose telephone number is (703) 308-1202.

July 1, 2005

Jonathan Ouellette
Patent Examiner
Technology Center 3600